IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION No 581 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOBHA @ POOJA W/O RAJESH CHANGRANI

Versus

RAJESH DAYALDAS CHANGRANI

Appearance:

MR YATIN SONI for the Petitioner.

MR LM CHHABLANI for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/09/2004

ORAL JUDGEMENT

Rule. Mr.Chhablani, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for hearing today.

By filing this Application under Section 24 of the Code of Civil Procedure, the applicant has prayed that the suit, being Civil Suit No.141 of 2003, which is

pending before the Court of Civil Judge (Senior Division), Surat, be transferred to the Family Court at Ahmedabad as the petitioner is residing permanently at Ahmedabad and being a lady, she finds it difficult to go alone to Surat to attend the said proceedings. It is submitted that she was required to file the aforesaid suit at Surat because the cause of action has arisen within the territorial limits of the Surat Court and, therefore, the suit was required to be instituted at the said place. It is submitted that, initially, she had filed proceedings in the Family Court at Ahmedabad, but since no cause of action had arisen within the Ahmedabad City limit, the plaint was returned to be presented before the proper court and that is why the suit is pending before the Surat Court. It is submitted that even her father is unable to accompany her as he is an aged man and the petitioner has not been paid anything by way of maintenance. Under the circumstances, it is prayed that the aforesaid suit pending at the Surat Court be transferred to the Family Court at Ahmedabad. It is submitted that the suit in question is for maintenance. It is also submitted that the petitioner is having a child, aged 9 years, and, therefore, it is submitted that it is very difficult for the petitioner to go along with the child to attend the proceedings at Surat.

Mr. Chhablani, learned Advocate for the respondent, on the other hand, submitted that since, initially, the suit was filed in the Family Court at Ahmedabad and since for want of territorial jurisdiction, the plaint was returned to the Surat Court, now, the suit cannot be transferred under Section 24 of the Code of Civil Procedure.

However, in my view, there is no basis in the said contention. Under Section 24 of CPC, the suit can be transferred from one court to another, and it cannot be said that the Family Court at Ahmedabad cannot decide the controversy between the husband and wife and which is in connection with the alimony claimed by the wife.

Under the circumstances, Civil Suit No.141 of 2003, which is pending in the Court of Civil Judge (Senior Division), Surat is ordered to be transferred to the Family Court at Ahmedabad, and on such transfer, the Family Court, Ahmedabad, is directed to proceed with the suit expeditiously.

Rule is made absolute accordingly, with no order as to costs.

Writ to be sent to the Court of Civil Judge (Senior Division), Surat, forthwith for transferring the case to the Family Court at Ahmedabad.

10th September, 2004 (P.B. Majmudar, J.)

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(apj)